



Issue Date January 9, 2008

Audit Report Number 2008-AT-1004

TO: Maria R. Ortiz, Director of Community Planning and Development, Miami Field Office, 4DD

Sony Lucet for

FROM: James D. McKay, Regional Inspector General for Audit, 4AGA

SUBJECT: The City of West Palm Beach, FL, Did Not Properly Administer Its Community Development Block Grant Program

HIGHLIGHTS

What We Audited and Why

We audited the Community Development Block Grant (CDBG) program administered by the City of West Palm Beach, Florida (City). The objective of the audit was to determine whether the City administered its CDBG program in accordance with applicable U.S. Department of Housing and Urban Development (HUD) requirements. We selected the City for review because the Miami HUD Office of Community Planning and Development ranked the City as high risk in its fiscal years 2006 and 2007 risk assessments. In addition, a previous HUD on-site monitoring review identified concerns with the City's administration of the CDBG program.

What We Found

The City failed to properly administer its CDBG program in accordance with HUD requirements. Specifically, the City was deficient in (1) contract administration, (2) monitoring, (3) maintaining supporting documentation, and (4) reporting program income. These deficiencies occurred because the City disregarded HUD requirements and had ineffective policies and procedures. The

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City failed to ensure that CDBG funds were used in compliance with program requirements and used to meet national objectives. As a result, we consider more than \$2.7 million to be unsupported costs because the City failed to demonstrate that national objectives and other program requirements were met.

The City did not adequately award four contracts in accordance with federal procurement requirements. It awarded contracts without full and open competition; did not prepare a cost analysis before awarding the contracts; and did not maintain documentation supporting that contractors were not debarred, suspended, or ineligible. These deficiencies occurred because of inadequate supervision of the procurement process and disregard for federal procurement requirements. As a result, the City could not ensure that more than \$1.2 million in contracts it awarded provided full and open competition and that the costs were reasonable.

What We Recommend

We recommend that the Director of the Miami Office of Community Planning and Development require the City to (1) provide documentation supporting that HUD requirements were followed and national objectives were met for 27 CDBG activities or reimburse the CDBG program more than \$2.7 million from nonfederal funds for not properly administering the program, and (2) develop, implement, and enforce more comprehensive written policies and procedures that comply with HUD requirements.

In addition, the Director should require the City to (1) provide supporting documentation to justify the eligibility and reasonableness of \$624,631 disbursed for the four contracts, or reimburse the CDBG program from nonfederal funds; and (2) ensure that federal procurement requirements are incorporated into the City policies and procedures, implemented, and enforced.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3. Please furnish us copies of any correspondence or directives issued because of the audit.

Auditee's Response

We discussed the findings with the City during the audit. We provided a copy of the draft report to City officials on November 21, 2007, for their comments and discussed the report with the officials at the exit conference on December 5, 2007. The City provided its written comments to our draft report on December 7, 2007. In its response, the City generally agreed with the findings.

The complete text of the City's response, along with our evaluation of the response, can be found in appendix B of this report.

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BACKGROUND AND OBJECTIVES

The City of West Palm Beach, Florida (City) receives annual Community Development Block Grant (CDBG) program funds from the U.S. Department of Housing and Urban Development (HUD). HUD awards annual grants to entitlement cities to develop viable urban communities by providing decent housing and a suitable living environment and by expanding economic opportunities, principally for low- and moderate-income persons. An activity that receives CDBG funds must meet one of three national objectives:

- Benefit low- and moderate-income families,
- Aid in the prevention or elimination of slums or blight, or
- Meet community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and when other financial resources are not available.

The City's Economic and Community Development Department administers the CDBG program.¹

The HUD Integrated Disbursement and Information System reported that the City expended more than \$3 million in CDBG funds for fiscal years 2005 (October 1, 2004, to September 30, 2005) and 2006 (October 1, 2005, to September 30, 2006).²

We selected the City for review because the Miami HUD Office of Community Planning and Development ranked the City as high risk in its fiscal years 2006 and 2007 risk assessments. In addition, the 2005 Miami HUD monitoring review identified six findings and three concerns. For example, the review found that the City did not maintain adequate supporting documentation for CDBG disbursements and did not properly monitor its subrecipients.

Our audit objective was to determine whether the City administered its CDBG program in accordance with applicable HUD requirements.

¹ On June 18, 2007, the City reorganized the Economic and Community Development Department to create two separate offices: (1) the Housing and Community Development Department and (2) the Economic Development and Small Business Division.

² Fiscal year 2004 and 2005 grant funds are reported in the periods of October 1, 2004, to September 30, 2005, and October 1, 2005, to September 30, 2006, respectively.

RESULTS OF AUDIT

Finding 1: The City Failed to Properly Administer Its CDBG Program

The City failed to properly administer its CDBG program in accordance with HUD requirements. Specifically, the City was deficient in (1) contract administration, (2) monitoring, (3) maintaining supporting documentation, and (4) reporting program income. These deficiencies occurred because the City disregarded HUD requirements and had ineffective policies and procedures. As a result, it failed to ensure that more than \$2.7 million in CDBG expenditures was used in compliance with program requirements and used to meet national objectives.

Deficiencies in the Administration of the CDBG Program

We reviewed 30 activities, 27 of which used fiscal years 2004 to 2006 CDBG funds and three of which used fiscal years 2001 to 2003 CDBG funds.

The City failed to properly administer its CDBG program in accordance with HUD requirements. Our review of the 30 CDBG activities found problems with 28 activities in (1) contract administration, (2) monitoring, (3) maintaining supporting documentation, and (4) reporting program income.

(1) Poor contract administration. Regulations at 24 CFR [*Code of Federal Regulations*] 570.503 require the recipient to sign a written agreement with the subrecipient before disbursing any CDBG funds. One of the provisions included in the agreement is a statement of work which should include sufficient detail of the work to be performed and a schedule for completing the work to provide a sound basis for monitoring the subrecipient's performance.

The City did not execute written agreements for six activities administered by other City departments. Also, it did not amend a contract for one activity to include a change in the scope of work. In addition, it executed contracts for five activities without sufficient detail of the scope of work to be performed. For example, the contract for one activity did not indicate the frequency of the services or how long they would be provided, and the contract for another activity did not indicate what rehabilitation work would be performed. As a result, the City was unable to monitor performance because it did not have sufficient detail of the work to be performed.

- (2) Poor monitoring.** Regulations at 24 CFR 85.40(a) require recipients to monitor grant - and subgrant - supported activities to assure compliance with applicable federal requirements and that performance goals are being achieved. Monitoring must cover each program, function, or activity.

The City failed to conduct monitoring reviews of 22 activities. City officials informed us that they did not know they had to conduct reviews of activities administered by other City departments or had to conduct reviews of economic development and fair housing activities. In addition, the City inadequately conducted monitoring reviews of three other activities. For example, it conducted a monitoring review of one activity, but did not maintain documentation supporting that the subrecipient took any actions to correct the finding. For the other two monitoring reviews, the City did not verify the beneficiary data to ensure that low- and moderate-income persons were served and that contract goals were achieved. By not monitoring or inadequately monitoring subrecipients, the City could not ensure that subrecipients complied with program requirements and met national objectives.

In addition, 24 CFR 570.902(a) requires that 60 days before the end of the recipient's program year, grant funds available and not drawn down be no more than 1.5 times the current year's grant amount.

In March 2006, the City realized that it was at risk of violating this requirement and reallocated almost \$1 million in CDBG funds to a housing rehabilitation activity in April 2006. The City was unsure of who was responsible for monitoring total available grant funds. Staff from the City's Economic and Community Development Department was unsure whether this monitoring was their responsibility or the responsibility of the City's Finance Department.

- (3) Inadequate supporting documentation.** Regulations at 24 CFR 570.506(b) require the recipient to maintain sufficient records to demonstrate that each activity undertaken meets one of the national objectives.

The contracts/written agreements required submission of a monthly beneficiary report. This report provides information on the number of low- and moderate-income persons served by the activity and serves as a tool with which the City can monitor the activity and assess its performance. However, the City failed to ensure that this report was submitted monthly and the data were verified for 18 activities. For those reports that were submitted, it failed to maintain documentation supporting that it verified the number of low- and moderate-income persons served and their income. By not ensuring the receipt of this monthly report and verifying the accuracy of the data submitted, the City could not ensure that the activities met the national objective of serving low- and moderate-income persons.

In addition, 24 CFR 570.501(b) and 570.506(h) require the recipient to maintain financial records to support how the CDBG funds provided are expended and to ensure that CDBG funds are used in accordance with all program requirements.

The City failed to maintain supporting documentation for CDBG expenditures for 15 activities. For example, the invoices attached to the payment requests for one activity indicated that construction work was conducted for a location other than the subrecipient location. The City maintained no supporting documentation to clarify this discrepancy before disbursing CDBG funds to the subrecipient.

We also reviewed eight other CDBG expenditures. The City paid four of these eight expenditures without ensuring that the (1) cost of the equipment was reasonable and the purchase followed applicable procurement procedures, (2) work performed was adequate and complied with local codes, and (3) income verification services rendered for the City were adequately performed and that the City was being correctly charged for the work. The four expenditures totaling \$37,390 were paid from fiscal year 1999, 2001, and 2004 grant funds that were not part of the 30 activities reviewed. By not ensuring that payments were properly reviewed and adequately supported before disbursing CDBG funds, the City could not ensure that CDBG funds were used in accordance with all program requirements.

- (4) Program income not recorded.** Regulations at 24 CFR 570.504(a) require the receipt of program income to be recorded as part of the financial transactions of the grant program.

Beginning in fiscal year 2002, the City generated receipts from code violations cited in the CDBG target areas by code enforcement officers who were paid with CDBG funds. However, the City failed to calculate and report program income generated in fiscal year 2002 and did not calculate and report program income generated in fiscal years 2003 through 2006 until November 2006. The City also did not calculate and report program income for the first six months of fiscal year 2007 until May and July 2007, respectively, although it had executed a written agreement on October 30, 2006, that required program income to be reported monthly. The City also failed to calculate interest on the program income that resulted from the delay in reporting the program income to the CDBG program. In addition, the City calculated \$106,193 in lien receipts collected from code violations cited in the CDBG target areas but did not report this as income to the CDBG program because the code enforcement officers could not be identified. Failure to record program income to the CDBG program in a timely manner reduces the availability of these funds to serve the intended beneficiaries.

Because of these deficiencies, the City could not assure HUD that CDBG funds were used in compliance with program requirements and to meet the national objective of serving low- and moderate-income persons. We consider \$2.7 million disbursed to 27 of 28 CDBG activities and \$37,390 disbursed for four expenditures to be unsupported costs until the City can show that these activities met the national objective and that disbursements were eligible. We also consider (1) \$50,929 not disbursed for a CDBG activity until the City executes an amendment to a contract for a change in the scope of work, and (2) \$106,193 in possible CDBG program income to be funds that could be put to better use if the City takes corrective action on these deficiencies. Appendix D provides a list of the 28 CDBG activities and their deficiencies. Appendix E provides a breakdown by CDBG activity of the questioned costs.

Two Examples of Poor Administration

The following two examples illustrate the City's poor administration of CDBG activities.

Code Enforcement (Activity ID Nos. 377, 413, 468, 504, 541, and 573)

Regulations at 24 CFR 570.202(c) state that code enforcement is an eligible activity when such enforcement, together with public or private improvements, rehabilitation, or services to be provided, may be expected to arrest the decline of the area. Regulations at 24 CFR 570.207(a)(2) state that CDBG funds are not eligible to be used to carry out the regular responsibilities of the local government. In addition, a memorandum of understanding required that special efforts be undertaken to make available to eligible and affected property owners the provision of economic and community development assistance and services through City programs.

The City Code Compliance Division enforces property standards within the City limits by sending code enforcement officers to designated zones to ensure that substandard conditions are addressed. The City used CDBG funds to pay the salaries of code enforcement officers to inspect for code violations and enforce code compliance within the CDBG target areas. As of July 2007, the City had disbursed more than \$1.3 million in CDBG funds for this activity between fiscal years 2002 and 2007.

The City provided no evidence to demonstrate that the objectives of arresting the decline of the area or serving low- and moderate-income property owners were met. The City provided no documentation supporting that the CDBG-funded code enforcement officers were partnered with some improvement, rehabilitation, or service projects to arrest the decline of the target area. In addition, no documentation was provided to support that special efforts were undertaken to help the eligible and affected property owners.

The Code Compliance Division did not maintain supporting documentation of the property owners or the addresses referred to the Economic and Community Development Department. In addition, the Economic and Community Development Department had no policies and procedures in place to maintain information provided by property owners in the CDBG target area who received violation citations. Staff from the Economic and Community Development Department said that they had not received many phone calls from affected property owners and it is unclear whether it was because the Code Compliance Division had not informed the property owners about the assistance available to them or whether the property owners did not wish to participate. Further, the Economic and Community Development Department had not conducted any monitoring reviews of the activity to assess whether code enforcement met the scope of services defined in the memorandum of understanding and the CDBG national objective.

While the City used CDBG funds for this activity beginning in fiscal year 2002, a memorandum of understanding between the Code Compliance Division and the Economic and Community Development Department was not executed until January 30, 2006. In addition, the City did not report program income timely from this activity.

Consequently, the City lacked assurance the CDBG funds spent for code enforcement activities met HUD requirements and were not used to carry out the regular responsibilities of the local government.

Housing Rehabilitation (Activity ID No. 548 and 549)

The City housing rehabilitation program provides funds to repair and rehabilitate properties owned and occupied by low- and moderate-income residents. In April 2006, the City reallocated approximately \$1 million in CDBG funds to construct new roofs on hurricane-damaged structures.

The City paid the contractor without documentation to justify the payment. Invoices for four properties did not provide sufficient detail of the work performed. Also, the City paid the contractor for these four properties before the work was approved as having been satisfactorily completed. In addition, the City paid the contractor for 16 properties for which the recipients were not income eligible under the CDBG program. The City recognized this error and reclassified the roof costs from the CDBG program to the state program, for which the recipients are income eligible.

The City provided us with a list of 12 recipients who complained of leaking, rotten wood or work not completed. Because of these complaints, the City initiated an internal audit of this activity in October 2006. These deficiencies illustrate that the City paid CDBG funds for roof work that may not have been adequate or benefited low- and moderate-income persons.

Ineffective Policies and Procedures

These deficiencies occurred because the City disregarded HUD requirements and had ineffective policies and procedures. In 2005, HUD conducted a review of the CDBG program and reported that the City had failed to conduct monitoring reviews of its subrecipients. In its response, the City concurred and stated that it had a system in place to monitor each subrecipient on an annual basis. However, our review disclosed that the existing City policies and procedures did not satisfy HUD requirements to properly administer the CDBG program. Specifically, City policies and procedures did not contain guidance to

- (1) Ensure that subrecipient contracts have clear and measurable performance goals,
- (2) Plan for monitoring of all CDBG activities to include developing a monitoring plan for the program year,
- (3) Conduct monitoring to include what supporting documentation and reports to review and verify,
- (4) Report monitoring results to the subrecipient and City management,
- (5) Review monitoring results to ensure corrective actions are taken and enforce sanctions against noncompliant subrecipients or contractors,
- (6) Identify adequate supporting documentation for payment requests by the subrecipient and contractor,
- (7) Determine how CDBG program income is to be calculated (i.e., from the code enforcement activity) and when to recognize it, and
- (8) Ensure that City management develops a systematic process to assign and hold staff accountable to monitor the programmatic and financial progress of all CDBG activities.

The ineffective policies and procedures and disregard for HUD requirements indicated that the City lacked the capacity to adequately administer the CDBG program in accordance with HUD requirements.

Conclusion

As a result of not adequately administering its CDBG program, the City failed to ensure that CDBG funds were used in compliance with program requirements and were used to meet the national objective of serving low- and moderate-income persons. Therefore, more than \$2.7 million expended for 27 CDBG activities and \$37,390 for four expenditures are unsupported. We also consider \$50,929 and \$106,193 to be funds that would be put to better use if the City executes an amendment to a contract for a change in the scope of work and properly identifies CDBG program income, respectively.

Recommendations

We recommend that the Director of the Miami Office of Community Planning and Development require the City to

- 1A. Provide documentation supporting that HUD requirements were followed and national objectives were met for 27 CDBG activities or reimburse the CDBG program \$2,735,149 from nonfederal funds for not properly administering the program.
- 1B. Execute an amendment to the contract for activity No. 589 for the change in the scope of work to ensure that the remaining \$50,929 is expended in accordance with the terms of the contract.
- 1C. Provide supporting documentation to justify that the disbursed amount of \$37,390 from activities that used fiscal year 1999, 2001, and 2004 grant funds was reasonable and allowable or reimburse the CDBG program from nonfederal funds.
- 1D. Calculate and recognize interest on the CDBG program income from the code enforcement activities for not recognizing the program income in a timely manner.
- 1E. Provide documentation supporting whether \$106,193 in collected liens should be recognized as CDBG program income. The amount recognized as CDBG program income plus any interest incurred must be transferred to the CDBG program.
- 1F. Develop, implement, and enforce more comprehensive written policies and procedures that comply with HUD requirements.

Finding 2: The City Did Not Adequately Award Contracts in Accordance with Federal Requirements

The City did not adequately award four contracts in accordance with federal procurement requirements. It awarded contracts without full and open competition; did not prepare a cost analysis before awarding the contracts; and did not maintain documentation supporting that contractors were not debarred, suspended, or ineligible. These deficiencies occurred because of inadequate supervision of the procurement process and disregard for federal procurement requirements. As a result, the City could not ensure that more than \$1.2 million in contracts it awarded provided full and open competition and that the costs were reasonable.

Federal Procurement Requirements Not Followed

Regulations at 24 CFR [*Code of Federal Regulations*] 85.35 and 85.36 require a grantee to (1) conduct procurements using full and open competition; (2) maintain records on the rationale for the procurement method used and contractor selected; (3) perform a cost analysis of every procurement action; and (4) ensure that contracts are not awarded to any debarred, suspended, or ineligible party.

The City awarded 10 CDBG contracts between January 2005 and December 2006. We selected four contracts to review totaling more than \$1.2 million, representing 96 percent of the total contracted amount for the two-year period. The City did not adequately award four contracts in accordance with federal procurement requirements or its own policies.

The City awarded three contracts without full and open competition.

- Regulations at 24 CFR 85.36(d)(4) allow the use of a single source procurement only when the grantee can show that the award of the contract is infeasible under another procurement method and one of the following applies: (1) the item is available only from a single source; (2) public emergency will not permit a delay which would result from using a competitive method; (3) HUD authorizes its use; or (4) after solicitation from a number of sources, competition is determined inadequate.

The City awarded a roofing and an architect contract amounting to \$1 million³ and \$40,000, respectively, using single source procurement. However, it did not maintain adequate supporting documentation to justify its use of the single source procurement to select the contractors.

- Regulations at 24 CFR 85.36(c)(4) state that grantees are to ensure that all prequalified lists of persons, firms, or products include enough qualified sources to ensure maximum open and free competition.

The City awarded a contract amounting to \$19,295 to rehabilitate a residential property using sealed bid procurement. It solicited sealed bids from an internal list of contractors to inquire about their interest. However, it did not maintain this list to include the contractors who were contacted or picked up the bid package. As a result, it could not ensure that enough qualified sources were used.

The City did not prepare a cost analysis before awarding a \$125,000 contract for the rehabilitation of a public facility and the \$40,000 architect contract. Without the required cost analysis, the City had no assurances that it obtained the best available services at the most advantageous prices for the procurement.

For the four contracts, the City did not maintain documentation supporting that the contractors were not debarred, suspended, or ineligible. While we found no evidence that the four contractors and their officers were excluded from participation in federal assistance programs, the City should incorporate and document this process to ensure that excluded parties are not awarded federal funds.

The City attributed the deficiencies to lack of oversight due to not having a permanent director for 18 months. While this may have been a contributing factor, we also found that the City's policies and procedures did not require (1) maintaining supporting documentation for a single source procurement to select a contractor even if the contractor was approved by the City commissioners; (2) a cost analysis of every procurement action to ensure that the cost was reasonable; and (3) maintaining documentation supporting that contractors were not debarred, suspended, or ineligible.

³ Since the roofing contract did not specify a total cost, we used the amount disbursed to the contractor as of December 31, 2006.

Conclusion

Federal procurement requirements stipulate that contracts be awarded with full and open competition and that the cost of the contract be reasonable. The City failed to maintain supporting documentation for four contracts to comply with these requirements. The City disregarded federal procurement requirements because its policies and procedures did not include all requirements. As a result, we consider \$624,631⁴ to be unsupported costs because the City could not show that quality goods and services were obtained equitably and at the most advantageous terms. The total amount of CDBG disbursements for the four contracts was \$1.1 million.

Recommendations

We recommend that the Director of the Miami Office of Community Planning and Development require the City to

- 2A. Provide supporting documentation to justify the eligibility and reasonableness of \$624,631 disbursed for the four contracts or reimburse the CDBG program from nonfederal funds.
- 2B. Ensure that federal procurement requirements are incorporated into the City's policies and procedures, implemented, and enforced.

⁴ Total disbursements were adjusted to consider the \$556,890 questioned in recommendation 1A.

SCOPE AND METHODOLOGY

Our audit objective was to determine whether the City administered its CDBG program in accordance with applicable HUD requirements. To accomplish our objectives, we

- Reviewed relevant HUD regulations and guidebooks;
- Reviewed HUD files to include annual action plans, monitoring reports, and independent public accountant reports;
- Interviewed HUD, City, contractor, and subrecipient officials;
- Reviewed relevant City ordinances, policies and procedures manuals, and internal audit reports;
- Reviewed City files and records to include contracts, memorandums of understanding, monitoring review reports, reimbursement packages, and other financial data; and
- Conducted site inspections of CDBG activities.

As of April 2, 2007, the City had allocated fiscal years 2004, 2005, and 2006 CDBG funds to 43 activities. Two activities were later cancelled. We numbered each activity based on its fiscal year source funding. For example, an activity that used fiscal years 2004 and 2005 CDBG funds was counted as two separate activities. The City expended funds for 27 of the 41 CDBG activities, and we reviewed the files for the 27 activities. We included in our review an additional three CDBG activities for which the City expended fiscal years 2001 to 2003 funds.

We interviewed City staff and reviewed activity files to determine whether the City administered the CDBG program properly. We reviewed activity files for monitoring reports and whether the City verified the accuracy of status reports submitted by subrecipients and contractors for meeting contractual obligations and national objectives. We also reviewed activity files for invoices, checks, bank statements, and other supporting documentation as evidence of monitoring efforts. We conducted site visits to two CDBG activities.

We reviewed CDBG disbursements for eligibility and reasonableness. We obtained the general ledger for CDBG disbursements between January 1, 2005, and December 31, 2006. The general ledger listed 1,446 disbursements totaling more than \$3.1 million. We selected eight expenditures amounting to \$222,348 (7 percent) for review based on activities noted in the minutes from the City commission meetings, largest dollar amount, and HUD concerns. We reviewed reimbursement packages and other supporting documentation to determine whether the activity met one of the national objectives, the activity was an eligible activity, the contractors or participants involved were eligible, and costs were eligible and reasonable.

We interviewed City staff and reviewed supporting documentation of select CDBG contracts for their procurement history. The City provided us with the Invoice Distribution Summary Report

for the period January 1, 2005, to December 31, 2006. According to this report, the City awarded 10 contracts totaling \$1,293,064. We selected four contracts amounting to \$1,240,450 (96 percent) based on the largest contract amount and to include a sealed bid, request for proposal, and single source procurement methods. We reviewed the procurement of the four contracts to determine whether they were carried out in accordance with City policies and procedures and federal requirements.

During our review of the housing rehabilitation activity, we reviewed recipient files to determine whether the files contained documentation supporting that the work was adequately completed and disbursements to contractors were properly supported. For our scope period, there were 79 recipients who benefited from CDBG funds expended on this activity. One recipient received general repairs and 78 recipients received roof repairs. We selected for review the one recipient who received general repairs, and used random number generator software to select four recipients (5 percent) who received roof repairs.

To achieve our audit objective, we relied in part on computer-processed data from the City's financial system. We performed limited testing of CDBG budget and expenditure information and found it to be complete, accurate, and reliable.

The audit generally covered the period October 1, 2004, through September 30, 2006, and we extended the period as needed to accomplish our objective. We conducted our fieldwork from February through July 2007 at the City offices located at 200 2nd Street, West Palm Beach, Florida.

We performed our review in accordance with generally accepted government auditing standards.

INTERNAL CONTROLS

Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved:

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined the following internal controls were relevant to our audit objective:

- Controls over program operations as they relate to the monitoring of CDBG activities, management of CDBG funds, and procurement of contracts.
- Controls over compliance with laws and regulations.
- Controls over the safeguarding of resources as they relate to the disbursement of CDBG funds.
- Controls over the validity and reliability of data.

We assessed the relevant controls identified above.

A significant weakness exists if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet the organization's objectives.

Significant Weaknesses

Based on our review, we believe the following items are significant weaknesses:

- The City failed to properly administer its CDBG program (see finding 1).
- The City did not adequately award four contracts in accordance with federal requirements (see finding 2).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS AND FUNDS TO BE PUT TO BETTER USE

Recommendation number	Unsupported 1/	Funds to be put to better use 2/
1A	\$2,735,149	
1B		\$50,929
1C	37,390	
1E		106,193
2A	<u>624,631</u>	<u> </u>
Total	<u>\$3,397,170</u>	<u>\$157,122</u>

1/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

2/ Funds to be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. This includes costs not incurred, deobligation of funds, withdrawal of interest, reductions in outlays, avoidance of unnecessary expenditures, loans and guarantees not made, and other savings that are specifically identified. For recommendation 1B, the \$50,929 represents funds that would violate contract terms if the City does not execute a contract amendment. For recommendation 1E, the \$106,193 represents potential CDBG program income since these liens may be cited by CDBG-funded code enforcement officers.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments



"The Capital City of the Palm Beaches"

Lois J. Frankel
Mayor
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December 7, 2007

Mr. James D. McKay
Regional Inspector General for Audit
U.S. Department of Housing and Urban
Development
Office of Audit, Box 42
Richard B. Russell Federal Building
75 Spring Street, SW, Room 330
Atlanta, GA 30303-3388

Dear Mr. McKay:

Transmitted is our response to the draft audit of the Community Development Block Grant Program administered by the City of West Palm Beach, Florida. It is our understanding that our comments will be included in the final audit report which we can expect to receive early next year.

If you have any questions, please contact Ms. Emelda Johnson, Housing & Community Development Director, at (561) 822-1250 or me 561-822-1400.

Sincerely,

Edward Mitchell
City Administrator

"An Equal Opportunity Employer"

Ref to OIG Evaluation

Auditee Comments

**CITY OF WEST PALM BEACH, FLORIDA
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AUDIT
HUD REGIONAL INSPECTOR GENERAL**

RESPONSE TO DRAFT AUDIT

Comment 1

Finding 1: The City Failed to Properly Administer Its CDBG Program

Response: The City agrees with the finding in the areas cited: (1) contract administration, (2) monitoring, (3) maintaining supporting documentation, and (4) reporting program income. However, the following activities were conducted within the City and City Commission action was taken to formalize the transfer of funds. Contained in the action to formalize the transfer was a detailed description of the purpose of the transfer which the City believes constitutes a scope of services. Therefore, the City requests reconsideration of the following:

1. The lack of sub-recipient agreements with the City's Code Enforcement office and
2. The lack of sub-recipient agreements with the City's Youth and Family Services operated out of the Vicker's House location.

Comment 2

Finding 2: The City Did Not Adequately Award Contracts in Accordance with Federal Requirements

Response: The City agrees that it failed to comply with Federal Single Source procurement requirements and that it failed to maintain documentation supporting that the contractors cited were not debarred, suspended or ineligible. However, the City's procurement office routinely maintains a list of contractors who are contacted and/or picked up bid packages. In the instance of the sealed bid, single family rehabilitation project in the amount of \$19,295 cited, although the City cannot represent the list to be complete, at least five contractors are documented. Lastly, a cost analysis before awarding a \$125,000 contract for the Gaines Park Press Box was prepared by City engineering staff.

Comment 3

Comment 4

RECOMMENDATIONS

1A Provide documentation supporting that HUD requirements were followed and national objectives were met for 27 CDBG activities or reimburse the CDBG program \$2,735,149 from nonfederal funds for not properly administering the program.

Response: Agree in part and disagree in part.

Counterproposal: Provide documentation supporting that HUD requirements were followed and national objectives were met for 27 CDBG activities. Schedule immediate grant program review to determine that procedures and policies are in place to address concerns going forward. If review reveals improper program administration, require that the City reimburse HUD from nonfederal funds for activities where HUD requirements were not followed and national objectives were not met.

1B Execute an amendment to the contract for activity # 589 for the change in the scope of work to ensure that the remaining \$50,929 is expended in accordance with the terms of the contract.

Response: Agree.

1C Provide supporting documentation to justify that the disbursed amount of \$37,390 from activities that were funded in fiscal years 1999, 2001 and 2004 was reasonable and allowable or reimburse the CDBG program from nonfederal funds.

Response: Agree in part and disagree in part.

Counterproposal: Provide supporting documentation to justify that the disbursed amount of \$37,390 from activities that were funded in fiscal years 1999, 2001 and 2004 was reasonable and allowable or determine disposition as per counterproposal in 1A.

1D Calculate and recognize interest on the CDBG program income from the code enforcement activities for not recognizing the program income in a timely manner.

Response: Agree

1E Provide documentation supporting whether \$106,193 in collected liens should be recognized as CDBG program income. The amount recognized as CDBG program income plus any interest incurred must be transferred to the CDBG program.

Ref to OIG Evaluation

Auditee Comments

Response: Agree

1F Develop, implement and enforce more comprehensive written policies and procedures that comply with HUD requirements.

Response: Agree

2A Provide supporting documentation to justify the eligibility and reasonableness of \$624,631 disbursed for the four contracts or reimburse the CDBG program from nonfederal funds.

Response: Agree in part and disagree in part.

Counterproposal: In lieu of reimbursement, determine disposition as per counterproposal in 1A.

2B Ensure that federal procurement requirements are incorporated into the City's policies and procedures implemented and enforced.

Response: Agree.

OIG Evaluation of Auditee Comments

- Comment 1** The City agreed with the finding but requested reconsideration that the City lacked subrecipient agreements with Code Enforcement and Youth and Family Services. Contained in the City Commission action to formalize the transfer of funds was a detailed description of the purpose of the transfer which the City believes constitutes a scope of services. This action does not constitute a subrecipient agreement with other City departments. We maintain that the City should execute written agreements for activities administered by other City departments in accordance with regulations at 24 CFR 570.503.
- Comment 2** The City agreed with the finding that it failed to comply with federal single source procurement requirements. The City stated that their procurement office routinely maintains a list of contractors who are contacted and/or who picked up bid packages. For the \$19,295 contract, the City indicated that five contractors are documented on a list. During our review, we identified five contractors that replied to this sealed bid, but we were not provided with a prequalified contractor list, who was contacted, or which contractors picked up bid packages. HUD regulations at 24 CFR 85.36(c)(4) require that grantees ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.
- Comment 3** The City stated that a cost analysis was prepared by City engineering staff before awarding a \$125,000 contract. During our review, we repeatedly attempted to obtain the cost analysis from the City but it was never provided to us.
- Comment 4** The City agreed with five recommendations and disagreed in part with three recommendations. The City agreed to provide supporting documentation. However, the City disagreed with the amounts to be reimbursed from nonfederal funds and stated that they will schedule a grant program review to determine that procedures and policies are in place to address concerns going forward. The City stated that if the review reveals improper program administration, then they would reimburse HUD from nonfederal funds. The City did not provide us with supporting documentation that could demonstrate that HUD requirements were followed and national objectives were met for 27 CDBG activities; disbursements made with fiscal year 1999, 2001, and 2004 grant funds were reasonable and allowable; and four contracts were awarded using full and open competition and that the costs were reasonable.

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Appendix C

CRITERIA

Federal (HUD) regulations at 24 CFR [*Code of Federal Regulations*]

85.20(b) requires the grantee's financial management system to have a budget control through which actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant.

85.32(d) states that property records must be maintained which include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and the cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property. In addition, a physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

85.35 states that grantees and subgrantees must not make any award or permit any award at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

85.36(b)(9) states that the grantee and subgrantee will maintain records sufficient to detail the significant history of a procurement. These records will include but not be limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and basis for the contract price.

85.36(c)(1) states that all procurement transactions will be conducted in a manner providing full and open competition consistent with this Part.

85.36(c)(4) states that grantees will ensure that all prequalified lists of persons, firms, or products, which are used in acquiring goods and services, are current and include enough qualified sources to ensure maximum open and free competition.

85.36(d)(2)(ii) states that if sealed bids are used, the invitation for bids will be publicly advertised, and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time before the date set for opening the bids.

85.36(d)(4) states that procurement by noncompetitive proposals method may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:

(A) The item is available from a single source;

- (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (C) The awarding agency authorizes noncompetitive proposals; or
- (D) After solicitation of a number of sources, competition is determined inadequate.

Cost analysis (i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits) is required.

85.36(f)(1) requires the grantee and subgrantee to perform a cost or price analysis in connection with every procurement action including contract modifications. At a minimum, the City must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the vendor is required to submit the elements of his/her estimated cost.

85.40(a) states that grantees are responsible for managing the day-to-day operations of grant- and subgrant-supported activities. Grantees must monitor grant- and subgrant-supported activities to assure compliance with applicable federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function, or activity.

570.200(a) states that an activity may be assisted in whole or in part with CDBG funds only if it meets certain requirements. One requirement stipulates the grant recipient to certify that their projected use of funds has been developed so as to give maximum feasible priority to activities which will carry out one of the national objectives of benefit to: low- and moderate-income families, aid in the prevention or elimination of slums or blight, or meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community when other financial resources are not available to meet such needs. Consistent with the foregoing, each recipient must ensure and maintain evidence that each of its activities assisted with CDBG funds meets one of the three national objectives as contained in its certification.

570.202(c) states that code enforcement is an eligible rehabilitation and preservation activity in that costs incurred for inspection for code violations and enforcement of codes (i.e., salaries and related expenses of code enforcement inspectors and legal proceedings but not including the cost of correcting the violations) in deteriorating or deteriorated areas when such enforcement, together with public or private improvements, rehabilitation, or services to be provided, may be expected to arrest the decline of the area.

570.207(a)(2) states that expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance except as otherwise specifically authorized.

570.501(b) states that the recipient is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the recipient of this responsibility. The recipient is also responsible for determining the adequacy of performance under subrecipient

agreements and procurement contracts and for taking appropriate actions when performance problems arise. Where a unit of general local government is participating with or as part of an urban county or as part of a metropolitan city, the recipient is responsible for applying to the unit of general local government the same requirements as are applicable to subrecipients.

570.503 states that before disbursing any CDBG funds to a subrecipient, the recipient shall sign a written agreement with the subrecipient. At a minimum, the written agreement with the subrecipient shall include the following provisions: (1) statement of work, (2) records and reports, (3) program income, (4) uniform administrative requirements, (5) other program requirements, (6) suspension and termination, and (7) reversion of assets. For the statement of work, the agreement shall include a description of the work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the recipient effectively to monitor performance under the agreement.

570.504(a) requires the grantee to record receipt and expenditure of program income as part of the financial transactions of the grant program.

570.506 requires each recipient to establish and maintain sufficient records to enable the Secretary to determine whether the recipient has met the requirements of this part.

- (a) The recipient shall maintain records which provide a full description of each activity assisted with CDBG funds, including its location, the amount of CDBG funds budgeted, obligated, and expended for the activity.
- (b) The recipient shall maintain records which demonstrate that each activity undertaken meets one of the criteria used to determine whether a CDBG-assisted activity complies with one of more of the national objectives.
- (h) Recipients shall maintain evidence to support how the CDBG funds provided to such entities are expended. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by appropriate parties, and/or other documentation appropriate to the nature of the activity.

570.902(a) states that before the funding of the next annual grant and absent contrary evidence satisfactory to HUD, HUD will consider an entitlement recipient to be failing to carry out its CDBG activities in a timely manner if 60 days before the end of the grantee's current program year, the amount of entitlement grant funds available to the recipient under grant agreements but undisbursed by the U.S. Treasury is more than 1.5 times the entitlement grant amount for its current program year.

Attachment A of OMB Circular A-87 states that to be allowable under federal awards, costs must be necessary and reasonable for proper and efficient performance and administration of federal awards. A cost is reasonable if, in its nature and amount, it does not exceed what a prudent person would incur under the circumstances prevailing at the time the decision was made. In determining reasonableness of a given cost, consideration shall be given to:

- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the federal award.
- b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; federal, state, and other laws and regulations; and terms and conditions of the federal award.
- c. Market prices for comparable goods or services.
- d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the federal government.
- e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

Managing CDBG: A Guidebook for Grantees on Subrecipient Oversight states that because local governments are subject to the same requirements as subrecipients, inter-agency or inter-departmental agreements should include the same provisions as required in a subrecipient agreement.

City Policies and Procedures

Article IV of section 66-62 of the City Procurement Code, Invitation to Bid, provides specific requirements. Section 66-62(d) states that public notice of the invitation to bid and of selection committee meetings, if applicable, shall be given in accordance with applicable state statutes.

Procurement Division: Policy and Procedures manual states that the notice of bid shall be advertised in a newspaper of countywide circulation or as otherwise authorized by law.

Economic and Community Development Department: Administrative Policies and Procedures states that federal requirements set forth at 24 CFR Part 5 prohibit the provision of federal funds to debarred, suspended, or ineligible contractors, subcontractors, or subrecipients. Grantees are required to check the HUD listings for this purpose.

Appendix D

TABLE OF DEFICIENCIES FOR THE 28 ACTIVITIES

No.	Fiscal year grant	Activity ID *	Deficiencies			
			Poor contract administration	Poor monitoring	Inadequate supporting documentation	Unrecorded program income
1	2001	377	X	X	X	X
2	2002	413	X	X	X	X
3	2003	468	X	X	X	X
4	2004	506	X	X	X	
5	2004	507	X	X	X	
6	2004	508	X	X	X**	
7	2004	509		X	X	
8	2004	510		X	X	
9	2004	511		X	X	
10	2004	512		X	X	
11	2004	513		X	X**	
12	2004	504	X	X	X	X
13	2004	515		X	X	
14	2004	589	X		X	
15	2004	521	X	X	X**	
16	2004	548/549			X	
17	2005	541	X	X	X	X
18	2005	542		X	X**	
19	2005	552		X	X	
20	2005	553		X	X**	
21	2005	570	X	X	X	
22	2005	551		X	X	
23	2005	547		X	X	
24	2005	548/549			X	
25	2006	573	X	X	X	X
26	2006	584		X	X	
27	2006	583		X	X	
28	2006	571		X	X	

* The activity identification (ID) numbers were obtained from the HUD Integrated Disbursement and Information System.

** This denotes an activity for which the City failed to obtain and verify the required monthly beneficiary data or progress reports and failed to maintain adequate supporting documentation on the disbursements for the activity.

Appendix E

SCHEDULE OF QUESTIONED COSTS FOR FINDING 1

No.	FY grant	Activity ID (a)	Unsupported costs (b)
1	2001	377	\$164,252
2	2002	413	254,161
3	2003	468	195,307
4	2004	506	40,368
5	2004	507	50,174
6	2004	508	17,250
7	2004	509	25,000
8	2004	510	7,387
9	2004	511	18,000
10	2004	512	15,000
11	2004	513	8,000
12	2004	504	227,806
13	2004	515	90,000
14	2004	521	25,000
15	2004	548 / 549	537,122
16	2005	541	268,371
17	2005	542	90,414
18	2005	552	41,171
19	2005	553	37,617
20	2005	570	10,000
21	2005	551	12,520
22	2005	547	127,480
23	2005	548 / 549	154,242
24	2006	573	231,678
25	2006	584	20,702
26	2006	583	26,005
27	2006	571	40,122
		Total	\$2,735,149

- (a) The activity identification (ID) numbers were obtained from the HUD Integrated Disbursement and Information System.
- (b) The amounts represent the disbursed amounts for the activity as of April 2, 2007, except for activity ID Nos. 377, 413, 468, 504, 541, and 573, the disbursed amounts of which were as of July 12, 2007.